

In the heart of the 27th UIA World Forum of Mediation Centres

www.uianet.org

The 27th UIA World Forum of Mediation Centres has been organised in Milan (17-18 January 2020). It was a very interesting event gathering high professionals of mediation from all around the world coming from 25 countries of all the various continents. **Marina Tavassi**, President of the Court of Appeal of Milan, **Stefano Azzali**, General Director of the Milan Chamber of Arbitration and **Francesca Maria Zanasi**, President of the Committee for International Matters at the Milan Bar Association did the honour to welcome and open the forum with **Fabienne van der Vleugel**, in her capacity of President of the UIA World Forum of Mediation Centers.

The first topic developed was the **Italian Outlook** by **Stefano Pavletic**, Mediator CCPIT and Italy-China Mediation Centre, **Nicola Giudice**, Head Officer of Mediation Service, Milan Chamber of Arbitration, **Angelo Santi**, Lawyer and Mediator, President of UNAM (Unione Nazionale Avvocati per la Mediazione) and **Adriana Capozzoli**, Adjunct Professor of Mediation, University of Florence, Lawyer, civil, commercial and family Mediator. A new market of mediation has been emerging in Italy, thanks to the law voted in 2010, with different perspectives between all stakeholders leading to democratise mediation. As Nicola Giudice said, “we have climbed a mountain, we are not at the top yet but it is not far”. After an initial experimental phase, the “Fast Track” has officially become an alternative solution service with advantages in terms of flexibility and adaptability to parties’ needs about confidentiality and rapidity. Finally, it has been underlined that mediation can definitely increase the country economic competitiveness for foreign investors.

A session about Innovative approaches to mediation has been developed by **Danielle Hutchinson**, Lawyer and Mediator, Resolution Resources, Melbourne, Australia with MyDRHub. It is an innovative party centric dispute resolution where continuum of dispute savviness is always questioned. It mixes the predictable behaviour and the contextual factors creating the Triage, Resourcing and Modality Matrix (TRAMM) identifying disputes that were most likely to be resolved. Another evidence-based practice has been developed by **Jill Goldson**, Mediator, Family Matters Centre from Auckland, New Zealand. She exposed how involving children in the process, when possible, is important to give a voice and not a choice. The aim is to authorize them expressing their feeling in order for the parents to better understand the real impact of their own disputes. The Therapeutic Family Facilitation (TFF) enables confidentiality and triggers adapted solutions, allowing the child to speak and be heard. “The child inclusive intervention is not a therapy per se, but is a dispute resolution with a therapeutic outcome.”

The third topic organised by **Brigitte Bouvier**, BBMT Avocats, CEDR Accredited Mediator, Co-founder of the association Avomarc was evoking **the need of mediation in Africa and the answer of OHADA**. **Christian Hausmann**, Lawyer and Mediator in France raised the fact that willingness to legislate on mediation is real and concrete, but requires time. The Uniform Act on Mediation was voted in November 2017 by OHADA after two years and a half of draft law. Amongst the OHADA’s seventeen delegations there are some more active than others, but the number of mediation must increase. “Conventional mediation is not the good word” for Christian Hausmann, but universe mediation needs to be worked out. Countries need to work together. Mauritius testifies the opposite by branding itself on its yearly arbitration conference but they are not part of OHADA. Mediation awareness needs to be

further developed. It was recently the case in Kinshasa where the association of three persons from Paris went outside their circle and organize trainings to encourage people “to take advantage of their conflict”.

The fourth topic developed was about the **conflict management** with relevant speakers such as **Pete Swanson**, Director Office of Conflict Management and Prevention, Federal and Mediation and Conciliation Service (FMCS), Washington DC, USA; **Paul Latreille**, Professor of Management from the Sheffield University Management School, UK; **Corina Bölsterli Maier**, Mediator and Coach, cbm Office for Mediation, Coaching and Supervision, Lindau, Germany, and **David Thaler**, Senior Advisor, FMCS. **The US perspective** of a mediator is seen as a connector. Despite several strikes and tense climate to help on bargaining contract all around the world, an independent agency of federal mediation and convention was created in 1947 where more than thousands of cases are handled now. An integrative conflict management system has been enhanced to identify the source of recurring disputes and preventing steps to avoid such disputes in the future. A leader needs to know how to lead or it will be a problem. A dashboard enables to keep track on where the problems are. Mind-set is an important set up as people pay for a connection and not for a conflict. In Britain, the conflict begins to move away from the conventional system to a strategic approach with benefits rather than simply being a transactional issue. It is seen as a tool to prevent conflict by changing culture and doing things differently. Four years ago, the National Health Service has researched and found the existence of a Content Management System (CMS), analysis of the process including data. In Switzerland, companies are liable for the well-being of their employees in the working environment and the Swiss Federal Supreme Court (ATF 9 may 2012) implies the set-up of a proper system of conflict resolution within a company without any mandatory standards except the designation of a “reliable independent person”. Conflict can be positive but it is still destructive and the promotion of this system needs to be further developed. Costs of a conflict are huge. So if you get people to speak, you earn something.

Abuse in the Mediation Process is the topic developed by **Professor Dr Renate Dendorfer-Ditges**, Partner, Lawyer, Arbitrator, Mediator, Ditges Partnerschaft mbB and **Galyna Yeromenko**, lawyer/Mediator, Ph.D, First President at National Ukrainian Association of Mediators, Founder and CEO of Ukrainian Mediation Center (UMC) at Kyiv-Mohyla Business School. Mediation is governed by principles of independence and confidentiality that also implies good faith of parties. However, it is important to analyse the various situations : some behaviours may be wrongly interpreted as being bad faith. It is merely due to the fact that parties need some time to deeply work, and be concretely involved in the research and building of the solution. During the process, parties’ commitment is evolving and is increasing from 1% to 100%, thanks to mediator’s work. Thus, few situations have been truly stressed out as proving real bad faith of the parties. Behaviours of the parties may change and evolve, but it is not, as such, a proof of bad faith. Since parties are voluntarily participating in the process, they are willing to remain in the process, but need some time to think, evaluate and judge/study all sides of the situation that they begin to discover and analyse from other viewpoints. Besides, mediator’s role is not to moralise. If there is a real risk of bad faith, withdrawing may be an alternative. The task remains to find the best alternative to negotiate an agreement (BATNA). This session ended underlining the fact that the parties’ intention is also having a real and intense discussion, and the essential is the voluntariness of people as they are also free to not engage.

The last topic of the day was about **Opportunities and Obstacles for Business Mediation and Conflict management**. **Monique Van de Griendt**, Director and Mediator at Dialogue BV, Bussum, The Netherlands and **Pasquale Orrico**, Advocate at Arlenghi Agostini Avvocati and Mediator, Milan, Italy, were animating this session. What are the needs and possibilities for commercial mediation in The Netherlands? It was stressed how important it

may be for mediators to also have a legal expertise, even if their main task is to facilitate the talks between parties as well as to defuse the tensions and emotions of the parties. Thus, main impediments to mediation have been exposed such as the awareness of this process, the quality and cost, the role of lawyers and judges. In Italy, judges can send parties into mediation at any moment of the process keeping the confidentiality and the enforceability of the agreement. The access is granted by fixed-price and there is legal aid as well as no mediation fee for information preliminary session. Generally, mediation relates to the effectiveness of other forms of conflict resolution but it is actually seen positively when mediation is mixed with another dispute resolution system. The main reasons for mediation are the speedy process, low cost and the fact that it maintains as well as it improves business.

On the second day of the forum, the first topic developed was about **Practices and Benefits of Self-Regulated and Imposed Dispute Resolution Systems and Design within and across industries, continents and into cyber-space**. **Georges Hanot**, Mediator, Founding Partner at Con-Sent ADR, Chair of the Belgian Supply Chain Initiative and Initiator of other self-regulated bodies, **Shirli Kirschner**, Dispute System Designer, Consultant and Mediator, CEO of Resolve Advisors, Dispute Resolution Adviser for the wholesale energy market and music industry, Co-founder of the Elker-app feedback and reporting as well as **BC Thiruvengadam**, Advocate, International Mediator and Arbitrator, Honorary Director, Bangalore International Mediation, Arbitration and Conciliation Centre, India, have animated this session. They have put forward the diverging interests between all actors, sectors and activities raised to competitive tensions and disputes, which may threatens its sustainability and also impacts all of the stakeholders of the ecosystem. Georges Hanot said “the conflict is not a problem to resolve, it is an opportunity for the future”. Indeed, the need is to empower culture to prevent dispute in the future, to design a system that will enable to understand all steps and avoid them to repeat. BC Thiruvengadam underlined a very useful system used in India : the Panchayath. Non-political and democratically elected, it resolves every kind of conflicts, as people prefer avoiding public judicial proceedings, and are much more attracting by resolving the dispute privately. Lankadakai is another voluntary based system in which a kind of mediator is acting, without having all the common characteristics. Shirli Kirschner has talked about the national energy market dispute in Australia linked to the global warming situation and a new way to collect data has been evoked, the Elker platform, to better choose the adapted dispute resolution system.

The next extremely interesting topic of the day was led by the exceptional **Ross W Stoddard III**, Attorney-Mediator, Dallas, Texas, USA. **Seeing the Glass as Half full not Half-empty, use any impact of mediators’ optimism during the mediators’ process**. This session gave the possibility to think about the impact of the attitude and behaviour determining a discussion. What do you have to do in order to change the perspective positively. How can you act to fix the good mood and the right conditions, and set up the good atmosphere to help resolving a dispute. The approach of mediation needs to be done carefully and maybe with some positive excitement. Everything is linked on how you say it! The negotiations may rapidly go to the right or wrong direction, because of a smile or some behaviour. You may think about choosing good words, carefully, in order to have a positive impact. Just by replacing the term “difficulty” by the word “challenging”, or “but” by “and” are so much details that lead to a positive outcome. Settlement or not, the importance is to restore a constructive dialog and positive mind-set means, finding the “good news” in every move helping the parties to be okay with their choice.

Does the mediator improve the performance level of the negotiators? This was the question raised on the third topic handled by **Gérard Kuyper**, Partner Alterys, Accredited Mediator from Brussels, Belgium. Mediators need to be careful with the “overconfidence bias” strongly contributing on countering the proper functioning of the mediation process and

impacting the quality of the agreement negotiated. Heuristics are source of errors leading to cognitive biases and they have a strong impact on the quality of the agreement. Psychology influences decision-making and the fact that people tend to stay in their comfort zone by going to court. Nudges can be developed to help them on choosing the best and a professional advice influences the client's perception of risk. The role of a mediator is not to assume but to know the exact information. Framing biases have been highlighted and as we know that different realities can be created, the mediator needs to be creative to present the reality differently. The main role of the mediator is to reopen dialog between parties and help them to have a common point of view as well as understanding.

The fourth topic was about **The Acceleration of the Development of international Business Mediation after the Singapore Convention** developed by **David Lutran**, Lawyer and Mediator, Lutran & Associés, Paris, **Josephine Hage Chahine**, Lawyer, Mediator and Professor at La Sorbonne, **Catherine Peulve**, Paris Lawyer and Mediator, **Ettore Maria Lombardi**, Professor in Italy, **Danielle Hutchinson**, Lawyer and Mediator, Resolution Resources in Australia. Singapore convention is a powerful tool reinforcing mediation in regional and national judicial systems scale, as 51 States members are part of it. It frames mediation internationally and truly helps the development of international business relationships. In this session, arbitration has been explained, in comparison with mediation, but also considered as a complemented solution to resolve a dispute with the Arbitration-Mediation-Arbitration (Arb-Med-Arb) protocol. Singapore Convention was the missing piece of the international dispute resolution enforcement framework to develop business and to gain recognition and visibility. It encourages mediation in the Belt and Road Initiative (BRI) area covering many countries and in some industries like construction and shipping.

Mediation in China - an insight on recent development and main trends in the Dynamic Chinese market was developed by **Stefano Pavletic**, Business consultant, Mediator CCPIT, **Antonietta Marsaglia**, Mediator CCPIT and Italy-China Mediation Centre, Studio Legale Masaglia as well as **Chun Wai Ling**, Chairman of the Hong Kong Mediation Council Hong Kong S.A.R. Mediation in China is still a young product in the market but China shares its best practices with its two powerful drivers, the Singapore Convention and the BRI. China uses the diversification to develop synergies and different mechanisms toward implementation of mediation in the judicial system. Mediation has cross-cultural values that need to be considered with the BRI and the Greater Bay Area including Hong Kong where 1% of China represents 12% of the Gross Domestic Product. This is clearly a bridge between East and West even if mediators need to be careful with political influence, military and geopolitical matter. Mediation centres overcomes difficulties by providing assistance, economic interest, competition and a step forward.

The last topic of this enriching forum was about **Mediation Providers and how they assist the parties before and during the mediation**. This session has been presented by **Raffaella Maria Pileri**, In Mediazione SRL, **Roberta Regazzoni**, Milan Chamber of Arbitration, **Georges Hanot**, Mediator, Founding Partner at Con-Sent ADR, and **Pasquale Orrico**, Advocate at Arlenghi Agostini Avvocati and Mediator. Being a mediator is before all a job for passion, believing in the potential, to a better world, in terms of quality of life and happiness as well as in relationship, the most important value to human beings. Promotion of mediation services is important and one way to make mediation more popular is to innovate. Marketing strategy is interesting as such content is king.

These two days have been full of debates and discussions about mediation, mediators, amicable settlements, and the way to approach this alternative discipline as well as improving it all around the world. Singapore Convention has been stressed as a strong tool increasing the recognition of it worldwide, and as a legal framework mitigating impediments to empower culture and confidence. Mediation is a promising practice enabling pragmatic and tailor-made solutions concerning every area of life such as family, work place, business investment and many industries such as construction, energy and shipping.

We are looking forward to attending the next UIA World Forum of Mediation Centres taking place in SYDNEY- AUSTRALIA in September 2020¹.

*Written by Emeline Trajan
Translator – Interpreter – Public Writer
ET Traductions
www.et-traductions.com*



Fabienne van der Vleugel
*President of UIA World Forum
Mediation Centres - Founder
of VDV Avocats law firm
(Meaux - New York) -
Accredited mediator (IEAM,
AMIDIF, bMed, MCI Arb,
CMCC) - Associate professor
at University Gustave Eiffel
(Meaux) - French Foreign
Trade Advisor*

Emeline Trajan
*Translator - Interpreter
Transcriber – Public Writer
Founder of ET Traductions
(Meaux - France)
Consultant in Luxury
Hospitality Industry &
Tourism
International Business &
Africa specialist*



¹ For other events of UIA, please refer to www.uianet.org/en/events